

AMENDED IN ASSEMBLY APRIL 15, 2009

AMENDED IN ASSEMBLY APRIL 2, 2009

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

## **ASSEMBLY BILL**

**No. 979**

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**Introduced by Assembly Member Tom Berryhill**

February 27, 2009

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An act to add Sections 1020 and 1021 to the Fish and Game Code, relating to fish and game.

### LEGISLATIVE COUNSEL'S DIGEST

AB 979, as amended, Tom Berryhill. Hunting or fishing: local regulation.

The California Constitution provides for the delegation to the Fish and Game Commission of powers relating to the protection and propagation of fish and game. Existing statutory law delegates to the commission the power to regulate the taking or possession of birds, mammals, fish, amphibia, and reptiles in accordance with prescribed laws. Under existing law, the Department of Fish and Game exercises various functions with regard to the taking of fish and game. Under existing law, a city or county exercises certain limited authority with regard to the regulation of fish and game for the protection of public health and safety.

This bill would provide that the state fully occupies the field of hunting and fishing. The bill would also provide that unless otherwise expressly authorized by the Fish and Game Code or other state or federal law, the commission and the department are the only entities that may adopt or promulgate regulations regarding the taking of fish and game on any lands or waters within the state, except as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 1020 is added to the Fish and Game Code,  
2     to read:  
3     1020. (a) The Legislature finds and declares all of the  
4     following:  
5     (1) The California Supreme Court in *In re Makings* (1927) 200  
6     Cal. 474, determined that Section 25 ½ of Article IV of the  
7     California Constitution, as currently set forth in Section 20 of  
8     Article IV, prohibits local governmental entities from regulating,  
9     or interfering with, fish and game matters and places this  
10    responsibility with the Legislature in order to conserve California's  
11    fish and wildlife populations and permit the largest use of fish and  
12    game compatible with the reasonable protection thereof.  
13    (2) The Fish and Game Commission was established in 1870  
14    to assist in the science-based management of California's fish and  
15    wildlife resources. The California Constitution permits the  
16    Legislature to delegate to the commission certain powers relating  
17    to the management of fish and game, and the Legislature has  
18    delegated to the commission regulatory powers over the taking  
19    and possession of fish and game, as set forth in this code.  
20    (3) Hunting and fishing are statistically among the safest outdoor  
21    recreational activities, particularly as they relate to impacts on the  
22    general public, and are already well regulated by the state through  
23    mandatory safety requirements, weapons laws, and regulations  
24    adopted by the commission. Additional local regulation is both  
25    unnecessary and significantly impedes the uniform, science-based  
26    administration of fish and game laws. Hunting and fishing activities  
27    are also compatible with other recreational uses on many public  
28    lands and waters throughout the state.  
29    (b) In enacting this section and Section 1021, it is the intent of  
30    the Legislature to affirm, subject to applicable *state and* federal  
31    law, the exclusive legal authority granted to the commission and  
32    the department with regard to the taking and possession of fish  
33    and game and thereby ensure necessary comprehensive statewide  
34    control by the commission and the department over all fish and  
35    game matters for wildlife conservation purposes and the protection

1 of, and access to, hunting and fishing opportunities for the public.  
2 It is further the intent of the Legislature to protect public health  
3 and safety in those rare and limited instances where state laws and  
4 regulations have not already provided a reasonable level of public  
5 health and safety by allowing a local ordinance to affect the taking  
6 of fish and game within the territorial jurisdiction of the local  
7 agency, if the ordinance is both necessary to protect public health  
8 and safety and only incidentally affects the state preempted field  
9 of hunting and fishing. The ordinance shall not indiscriminately  
10 extend or apply to any area in which the taking of fish and game  
11 may occur in a manner that does not endanger public health and  
12 safety or to any lands or waters owned or managed by the state or  
13 federal government.

14 SEC. 2. Section 1021 is added to the Fish and Game Code, to  
15 read:

16 1021. (a) The state fully occupies the field of hunting and  
17 fishing pursuant to this code, regulations adopted by the  
18 commission pursuant to this code, and Section 20 of Article IV of  
19 the California Constitution, and all local regulations are subject to  
20 this section.

21 (b) The commission, the department, or any other governmental  
22 entity legally authorized to affect the taking of fish and game on  
23 navigable waters held in public trust shall, to the extent possible,  
24 ensure that the fishing and hunting rights of the public guaranteed  
25 under Section 25 of Article I of, and Section 4 of Article X of, the  
26 California Constitution, are protected in a manner consistent with  
27 those provisions.

28 (c) Unless otherwise expressly authorized by this code or other  
29 state or federal law, the commission and the department are the  
30 only entities in this state that shall adopt or promulgate regulations  
31 regarding the taking of fish and game on any lands or waters within  
32 the state. ~~This subdivision does not prohibit a private landowner~~  
33 ~~or his or her designee from restricting the taking of fish and game~~  
34 ~~on property that he or she owns in fee title, during the period of~~  
35 ~~ownership. Nothing in this section or Section 1020 prohibits a~~  
36 ~~landowner or the landowner's designee from restricting the taking~~  
37 ~~of fish and game on property in which the landowner has an~~  
38 ~~ownership interest.~~

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